

TESTIMONY of NECTA
before the Connecticut General Assembly Energy and Technology Committee
Thursday, March 12, 2009
on Raised Bill No. 6634

Good afternoon. My name is Bill Durand, and I represent the New England Cable & Telecommunications Association ("NECTA"). Thank you for providing me with this opportunity to offer comments on Raised Bill No. 6634.

NECTA and its members oppose this proposal to include companies "providing telephone service using equipment that connects directly to the Internet" within the State's definition of "public service company" if the definition is intended to include cable delivered VOIP. Subjecting providers of these services to legacy regulation meant for monopoly providers of traditional telephone service would have a significant negative impact on the development and deployment of cable delivered VoIP service in Connecticut and hurt consumers who have enjoyed the benefits of deeply discounted and reliable voice services provided by NECTA member companies in the state.

Unlike other VOIP providers that deliver service by accessing the Internet directly, cable broadband voice services use Internet protocol (IP-based technology) over their own cable network to offer voice services, better ensuring the reliability and efficiency of the network and service provided to customers. To do this, the industry in Connecticut has spent billions of dollars in the past ten years upgrading its network and infrastructure.

NECTA respectfully asks that the Committee consider the following as you examine this proposed legislation.

1. **The existing regulatory framework for VoIP created a competitive voice marketplace and saved consumers billions of dollars on their phone bills, and should be preserved.**
2. **There is no need for state regulation of VoIP. The FCC has already addressed critical issues like 911, universal service regulation, and VoIP providers' obligation to cooperate with law enforcement on wiretapping. State regulation of VOIP will damage the critical balance that has resulted in the robust rollout of this nascent service and will hurt consumers by driving up costs that they ultimately bear.**
3. **State regulation of VoIP is preempted by Federal law and it would be counterproductive to discourage investment and deployment of VoIP service by embroiling providers in a legal dispute over the permissibility of the statute.**

1. VOIP HAS THRIVED IN A COMPETITIVE VOICE MARKETPLACE

The current regulatory framework for VoIP has helped create a thriving competitive voice marketplace in Connecticut and has saved residential and business consumers billions of dollars on their phone bills.

The longstanding policy of not subjecting VoIP to traditional telephone regulation has provided significant benefits to our state's residential and commercial consumers. Keeping VoIP free from burdensome and unnecessary regulation has helped to spur substantial investment in infrastructure and has resulted in vibrant competition in the market for voice service. This

regulatory structure has successfully created an environment in which providers feel confident to invest, innovate, deploy new technologies and create jobs.

Left free to create new business opportunities and services, cable operators have invested billions of dollars to build out a two-way interactive network with fiber optic technology, over which they can offer cable delivered VoIP and other innovative interactive services. Because of this investment, consumers now have a real choice of facilities-based voice service providers. The resulting competition has already saved consumers \$40 billion nationwide— and one study estimates that savings by 2012 could be more than \$110 billion.

Recognizing this, other local states, such as New Jersey, have enacted legislation to ensure the future deregulatory framework for VOIP services. To our knowledge, not a single state has enacted legislation subjecting VoIP providers to traditional telephone regulations. Connecticut's hands-off policy has given VoIP providers the flexibility to invest, innovate and respond to consumer demand. We believe that the interests of consumers will not be well served if Connecticut abandons the existing policies that have been the basis for promoting real choice and providing meaningful cost savings to voice customers.

2. THERE IS NO NEED FOR STATE REGULATION OF VOIP

As a competitor to traditional phone service, cable delivered VoIP succeeds in the marketplace based on the strength of the products that we deliver to our customers. This is a fiercely competitive marketplace. If a cable delivered VOIP provider does not meet its customer's high standards, that customer may choose to migrate to another provider. In light of this

competitive environment for voice services, cable delivered VoIP should be left unburdened in the absence of a demonstrated need for regulation. As an example of deregulation providing consumer value, in 2008 Cablevision's cable delivered VOIP was named the highest ranking residential phone service in the Eastern Region for 2008 based on customer satisfaction across a wide range of product attributes like performance and reliability, customer service, billing and cost.

Further, the Federal Communications Commission ("FCC") has applied a wide range of requirements to VoIP service providers to ensure that they meet critical consumer and public safety obligations. VoIP service providers must: 1) provide E911 service to customers, 2) provide the capability and capacity to meet law enforcement requests for wiretaps and other surveillance, 3) port customers' telephone numbers on request, 4) contribute to universal service programs, 5) ensure customer privacy, and 6) comply with disabilities access requirements. Regardless of whether VoIP service providers are classified as a public service company, these important social obligations are being met today.

3. STATE VOIP REGULATION IS LARGELY PREEMPTED BY FEDERAL LAW

State regulation of VoIP is, to a large extent, preempted by Federal law, and it would be counterproductive, especially in the current economic environment, to discourage investment and deployment by embroiling providers in a legal dispute over the permissibility of the statute.

The FCC has ruled that VoIP services with certain characteristics such as: 1) the use of a broadband connection to access the service, 2) the use of specialized IP-compatible equipment to use the service, and 3) the offering of integrated capabilities that allow customers to "manage" their

personal communications -- cannot be separated into interstate and intrastate components. Rather, such services are interstate services that are subject to the exclusive jurisdiction of the FCC.

Moreover, state VoIP regulation would likely violate the Commerce Clause because of the unavoidable effect that regulation on an intrastate component would have on interstate use of this service or use of the service within other states. *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd. 22404, ¶ 14 (2004), *aff'd sub nom. Minn. Pub. Util. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007). The FCC therefore has explicitly preempted state VoIP regulations, and any state attempt to regulate VoIP service as a proposed in House Bill 6634 would likely be deemed legally impermissible as it would most certainly create an unstable and uncertain regulatory environment that would discourage providers from making investments in VoIP products and services potentially harming consumers on an interstate basis. *See Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd. 22404, ¶ 46 (2004), *aff'd sub nom. Minn. Pub. Util. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

For these reasons, NECTA respectfully opposes any amendment to the definition of “public service company” that would encompass cable delivered VoIP providers within that definition.